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ABSTRACT

Collective bargaining, a relatively recent development in higher education, has aroused considerable interest among the members of the academic community. Recent developments in higher education have encouraged their interest: a depressed job market; serious institutional financial difficulties; state centralization and loss of campus autonomy; legislative supervision of faculty working conditions; and lack of faculty governance at emerging state liberal arts colleges. This review of recent literature includes discussion of these developments, the impact of collective bargaining on the academic community, professional rights and duties of faculty, and legal problems of collective bargaining. An annotated bibliography of 55 documents concludes the study. (HS)

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Collective Bargaining on Campus

Carol H. Shulman

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Collective Bargaining on Campus

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Foreword

Collective bargaining, a relatively recent development in higher education, has aroused considerable interest among members of the academic community. Some are fearful that it will be a disruptive influence. Others are hopeful that it will be an effective method for achieving professional goals. This review of recent literature includes discussion of why faculties are moving toward collective bargaining, the impact on the academic community and professional rights and duties of faculty, and legal problems in collective bargaining.

This report was prepared by Carol Herrnstadt Shulman, Research Associate at the Clearinghouse. It is the second in a new series of ERIC/Higher Education Clearinghouse reports to be published by the American Association for Higher Education (AAHE). In addition to the report series, the Clearinghouse also prepares brief reviews on topical problems in higher education that are distributed by AAHE as *Research Currents.*

Carl J. Lange
ERIC Clearinghouse on Higher Education
March 1972

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Review

Summary

College faculty are turning to collective bargaining and teachers' unions to cope with a wide range of professional problems. Recent developments in higher education have encouraged their interest:

- a depressed job market
- serious institutional financial difficulties
- statewide centralization and loss of campus autonomy
- legislative supervision of faculty working conditions
- lack of faculty governance at "emerging" state liberal arts colleges.

Faculty unionization has been facilitated by changes in state laws favoring public employee collective bargaining and the National Labor Relations Board's recent assertion of jurisdiction over most private institutions.

The growth of faculty unions has generated concern over the impact that collective bargaining will have on the academic community. Some educators fear an adversary relationship will develop between administration and faculty and that academic policy will be hammered out at the bargaining table. Others see unionization as the best way to protect and promote faculty interests.

Unionization raises complex legal questions which are unfamiliar to both administrators and faculty. These questions concern:

- the differences between state laws and the National Labor Relations Act

- the geographical scope and the professional membership of a collective bargaining unit
- the subjects that can and should be included in a negotiated contract
- the administration of an agreement.

In these early stages of collective bargaining, educators have an opportunity to establish guidelines that are appropriate for higher education.

Introduction

A recent survey reports that only 32 4-year institutions in eight states have collective bargaining agents;[1] however, union activity is present at many other institutions (48; see also 44) and the trend in this direction appears widespread and irreversible. How long it will take before most institutions have some form of collective bargaining is not certain:

> In assessing the pace of professorial unionization one must remember that it took only nine years to organize 65 per cent of the nation's schoolteachers for collective bargaining. . . .It is virtually certain that college and university faculties will follow this pattern in the 1970's. (38)

Faculty collective bargaining is spreading in both public and private institutions but at a sporadic rate, and has not been wholly endorsed by the college professors themselves. Some faculty members are worried that collective bargaining will threaten the nature of the academic community and for this reason oppose its implementation; others believe collective bargaining will benefit the academic community and resolve a wide array of professional problems. In a significant number of articles, legal writers accept the permanence of faculty unionization and discuss the practical issues involved. This internal debate suggests that faculty members are developing new approaches to meet their career problems and in the process are altering both their personal and public image.

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[1] Farber, M.A., "Professors' Unions Are Growing," *The New York Times*, November 14, 1971.

Why Faculties Organize

Commentators agree that faculty interest in collective bargaining can be attributed to a group of interrelated considerations that grow out of the nature of the academic profession as well as the traditional employer-employee relationship. Joseph W. Garbarino (23) points out that the primary reasons for faculty militance have shifted since 1967; then, upgrading the faculty role in institutional governance was a more urgent concern than present-day personnel and economic problems.

A 1967 study entitled *Faculty Participation in Academic Governance* noted the unusual cause of college teachers' demands and explained faculty unrest by the phenomenon of "rising expectations"—in a favorable atmosphere, professors look for accelerated improvement in their professional role:

> In conventional labor-management situations, worker discontent is often associated with periods of economic adversity. In contrast, faculty dissatisfaction is clearly a child of growth and affluence. Even the most monastic academic probably is aware that he "never had it so good" in terms of available employment opportunities, compensation, and prestige. (16)

The task force found this situation most prevalent among younger faculty at junior colleges and at institutions in transition from teachers' to liberal arts colleges.

Some writers (2, 6, 22, 27, 31, 40, 51, 53, Wollett 55) have also credited this desire for improvement as a reason for faculty unions. Matthew Finkin (19) suggests, in contrast, that senior faculty in emerging liberal arts colleges may seek collective bargaining because they feel threatened by the direction their institution is taking. Related to but distinct from these explanations is Joseph Garbarino's (22) belief that "core" or regular full-time faculty at established universities may agree to faculty unions only to support those less privileged individuals in the academic community who can achieve real gains through collective bargaining.

Since 1967, the decrease in financial support for higher education and the unhappy supply-and-demand ratio for new Ph.D.s have increased faculty concern for economic security (23, 38). College teachers are now inclined to join unions to win salary increases (4, 19, 29, 32, 38, 41, 51).

But higher salaries are still not necessarily the primary reason for faculty unions. Union spokesmen (5, 34, 36, 48, 52) give equal or greater emphasis to other faculty concerns such as legislative supervision of faculty working conditions. A survey of state universities and land-grant colleges during the recent wage-price freeze also suggests that other factors encourage unionization.[1] Unionization promises job security, which is particularly important to junior faculty in a tight market (19). Garbarino observes:

> To the "normal" degree of uncertainty induced by "up-or-out" promotion policies, the junior faculty member feels that an unknown additional quantity has been added by the growing concern of universities with the structure of ranks and by the flood of new entrants into the faculty labor market treading on his heels. (22)

The reduction in faculty mobility that has occurred may mean that junior faculty will take a greater interest in their college and seek greater participation in its governance through unionization if traditional methods are unsuccessful (9).

Faculty at public institutions have also become less secure in their roles as professors due to the development of statewide higher education systems designed to control and coordinate the burgeoning higher education industry. Decisionmaking on a wide range of issues is conducted at the state level rather than on individual campuses (16, 50). Consequently, college teachers lose control over policies on their own campus and may turn to collective bargaining as a method of dealing with a large, impersonal employer (2, 4, 16, 19, 29, 34, 40). Joseph Garbarino (22) comments that the coordinators of a statewide system tend to impose uniform policies and procedures on a mixture of institutions. He cites the collective bargaining action at Rutgers University as an example of faculty who organize to avoid this "homogenization": Rutgers faculty would like to be distinguished from the former state teachers colleges in the New Jersey system (see also 41). A statewide system also promotes unionization because it invites comparison of terms and conditions of employment at the different campuses of the junior and senior colleges. Faculty may use collective action to remedy any imbalances (4, 11, 16).

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[1] Fratkin, Susan. "Collective Bargaining in Higher Education? How Far? How Fast?" National Association of State Universities and Land-Grant Colleges. December 1971.

New developments in state and federal regulations have provided perhaps the single most significant impetus toward faculty unionization (3, 11, 19, 22, 38, McHugh 55). Currently, 19 states have 'aws under which public institutions "have been accorded or may be assumed to have negotiation rights" (45). Most of these laws were passed since 1967, and other states are likely to enact similar legislation (22, 38). Since two-thirds of the faculty in higher education are at public institutions (22), this trend toward state regulation of public employee organizations is significant. William McHugh (55) points out that since New York State passed its Taylor Law in 1967 both the State University of New York (which has 27 campuses) and the City University of New York (with 13 campuses) have organized and negotiated collective bargaining agreements.

Private colleges and universities were not faced with the legal compulsion to bargain collectively until the National Labor Relations Board (NLRB) in 1970 and 1971 asserted jurisdiction over private, nonprofit colleges and universities with a gross national revenue of $1 million for operating expenses (10, 12). Under its new ruling, the NLRB will oversee the union activity at about 80 percent of the nation's private colleges and universities (Livingston 55). Organizing activities have already begun at some institutions (10, 20, 39), and other colleges will probably feel the effects of the NLRB ruling (3, 22).

The Academic Community and the Professional

For faculty and administrators, the advent of collective bargaining raises broad questions about the closely related concepts of the academic community and the college teacher's professional rights and duties. Collective bargaining also poses problems for educators concerned about the impact of unionization on such diverse issues as meritocracy and institutional finance.

Some writers (5, 6, 13, 52) argue that faculties should work toward this goal of an academic community in which they play a significant part in the governance of the institution in cooperation with the administration and students. Brown (5) notes that collective bargaining on campus is unnecessary in this situation, but may be valuable in dealing with the state legislature or

coordinating board (46). Where shared authority does not exist, collective bargaining may be needed to achieve effective faculty role on campus (6, 15, 16, 20, 24, 31, 51).

In fact, union spokesmen (34, 36) regard collective bargaining as a form of faculty governance:

> [It is] a system of shared authority, based on a process of bilateral decision making by two agents (the University and the faculty) which are equal under the law. . . . (34)

Some advocates of faculty participation in governance believe that collective bargaining introduces an unwelcome adversary aura into the relationship between the faculty and the administration. They are concerned about the effect of this relationship upon the university. One author summarizes their arguments:

> . . . collective bargaining is based upon an adversarial relationship between employer and employee that derives from industrial models inappropriate to the university. . . . The employer-employee relationship is clearly repugnant to the finest universities, where faculties have traditionally managed the most important matters in the life of the institution. . . . [Under an industrial collective bargaining model],[e]ducational policy would. . .become the product of negotiation rather than of deliberation. (4)

The response of collective bargaining proponents to this fear of an adversary relationship is grounded on the assumption that a college teacher does not have the self-employed professional's autonomy. He is an employed professional in an employer-employee relationship, and as such is already in a struggle with the administration over many aspects of faculty and campus life (30, 34, 36). Union spokesmen contend that collective bargaining offers an opportunity to gain and defend the professional status college teachers want (34); others have suggested that collective bargaining may be preferable to some of the present traditions in higher education that they consider "unprofessional" (27, 40). However, administrators (20, Mintz 55) hold that college teachers who regard themselves as employed professionals have not resolved the problem of their status:

> [Faculty members] are, in a legal sense, employees; but they are also—to the extent that the Board of Higher Education [City

> University of New York] has delegated to them—. . .agents of the Board. Thus, in a sense, they are both employee and employer simultaneously. (Mintz 55)

In another area, educators (28, 33) are concerned about the effect of collective bargaining agreement on individual advancement. One writer summarizes these fears:

> Since the collective agreement binds all, individual advantages may be sacrificed to the demands of the whole faculty. Merit promotions or awards may cede to seniority. Incremental advantages of the few may be lost in order to better the economic state of the many. (28)

The City University of New York contract for full-time faculty, which establishes percentages of faculty who may hold specific academic ranks through January 1972, is an example of how union opponents' fears may be realized, although the administration has said it will not fill these quotas if there are not "qualified" personnel (22).[1] Others point out that "lockstep" is not imposed upon faculty (30). Furthermore, collective action may protect faculty autonomy from considerable local or state interference (36, 40).

This opposition to uniform standards is also discussed in connection with the "exclusivity" concept of collective bargaining. When an organization is certified as the bargaining agent at an institution, that organization is granted the exclusive right to represent the entire faculty unit. Faculty members who are represented by an organization they do not support may argue their right to act independently has been restricted (Finkin 55). One writer counters this argument:

> It is not clear, however, that the professor's claim to exemption as a conscientious objector as a special prerogative of his profession is any greater than that of people in other vocations where similar claims have been unsuccessful. (Sands 55)

Collective bargaining also raises very practical problems for institutions already financially pressed. Beyond any increases in salaries and other benefits a faculty may win, the institution must

[1] *NEA Agreement for Full-Time Faculty at the City University of New York. The City University of New York Agreement.* Board of Higher Education and the Legislative Conference, September 15, 1969.

also calculate the legal and personnel costs of implementing collective negotiations (4, 8): an experienced negotiating team, and diversion of personnel from other activities to provide information for the team. These considerations and the potential legal expenses involved before a unit determination is made suggest collective bargaining will be costly to the institution.

Some writers, who recognize the difficulties in faculty collective bargaining and want a more traditional, harmonious relationship with the administration, have proposed alternative forms of faculty representation. The most widely accepted of these is the faculty senate (Lieberman 15). The American Association of University Professor's policy statement on the "Representation of Economic and Professional Interests" describes the expectations of those who support the senate:

> As integral parts of the institution, such [faculty-elected] councils or senates can effectively represent the faculty without taking on the adversary and sometimes arbitrary attitudes of an outside representative. (4)[1]

The 1967 task force report, *Faculty Participation in Academic Governance* (16), also stresses the benefits of a faculty senate for avoiding hostilities between faculty and administration and points out that the senate can "reflect the particular professional values and standards of the faculty in each campus situation."

This concept of the faculty senate no longer may be viable for faculty interests because of the shift in emphasis from the professor's concern with academic affairs to his interest in terms and conditions of employment. This change has weakened the faculty's power to win approval of its proposals from the administration (15, 23, 34). In some instances, faculty senates may have lost power to represent the faculty's interests because they have been transformed into senates that represent all sectors of the institution, and consequently no longer deal with faculty interests alone (23). Faculty senates and other local organizations may find themselves increasingly drawn into the role of a collective bargaining agent (39, Finkin 55). As a collective bargaining agent, they have to achieve financial independence (50, Wollett 55), and are likely to become affiliated with a national organization at a later date (Finkin 55).

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[1] AAUP has recently issued a new position on collective bargaining; see (13).

Other writers (23, 28, 51) have called for the development of procedures that combine features of collective bargaining with joint administration-faculty cooperation. The plan now in effect at the University of Scranton (28) permits negotiations between a faculty team of AAUP officers, at-large faculty, and administrative representatives. Scranton President Hanley believes it offers the security of a contract without the hazards of unionization. The "productivity bargaining" concept Garbarino (23) advocates is taken from innovations in industrial labor relations. This process is based on mutual acceptance of the need for change. In this agreement:

> . . . major concessions [are traded] on both sides, with the final settlement ideally including machinery for joint action to improve efficiency for the future.

Another proposal is akin to the type of agreements negotiated by the American Association of University Professors. Stevens' (51) "procedural agreement" would establish salary and related items and would delegate other issues to campus bodies, including the academic senate. The author believes this arrangement has an advantage over the faculty senate because it provides a teacher with legal recourse when he has a grievance.

Legal Problems in Collective Bargaining

Since collective bargaining for faculty is a recent occurrence, both legal precedent and practical experience are lacking and must be developed. Administrators, faculty, and labor experts are still in the process of exploring collective negotiations for college faculty and formulating their positions.

Although collective bargaining problems that confront public as opposed to private institutions are usually the same, some distinction must be made between the public and private sectors because different laws and political considerations affect them. The National Labor Relations Board (NLRB) regulates private institutions, while public universities come under state jurisdiction. Robert Gorman (25) explains important concepts, such as the duty to bargain collectively, in the National Labor Relations Act (NLRA) and explains that many state statutes regulating public employee collective bargaining are based on the federal

model. There are, however, some significant differences: strikes are frequently prohibited under state law but are legal under the NLRA; and public institutions' contracts are dependent upon the state legislature's appropriations, while private institutions must seek out other reserves. From an administrative point of view, the NLRA is advantageous because it prohibits labor as well as management from unfair labor practices (see 37)—many state laws only cover management interference (3, 7). Thus, Cornell University, a private institution covered by New York State law, may have chosen to petition the NLRB for coverage because New York law does not restrict unfair union labor practices (7).

Perhaps the most difficult legal issue in collective bargaining is the "unit question": how should different classifications of professional employees be grouped together for negotiations. At public institutions there is the added problem of whether the whole state system should be considered as a unit or whether the faculty at each campus should negotiate its own contract with the state board instead.

In determining the composition of a bargaining unit, state public employee relations boards and NLRB hearing examiners typically employ the criterion of "community of interest," i.e., will the different groups included in the unit have the same interests and positions on the subjects to be negotiated (10, 19, 20, 50). More broadly, the range of criteria the NLRB looks to in determining a unit include:

> . . .prior history, custom, or pattern of negotiation; the common interests of employees; the desires of the employees; interchangeability of employees, and the extent to which employees are already organized. (McHugh 55)

The NLRB has refused to establish general guidelines for defining units,[1] preferring to decide cases individually. It has applied its criteria with some variation: it excluded departmental chairmen from the professional unit at C. W. Post (10) by considering them part of the administration, but classified them as part of the faculty at Fordham University (20).

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[1] "NLRB Won't Set Bargaining Rules for Professors," *The Chronicle of Higher Education*, August 30, 1971.

The question of what groups are included in the unit may determine the outcome of the election. Matthew Finkin observes:

> It is understandable that an employee organization attempt to shape the bargaining unit to maximize the likelihood of its eventual selection by a majority of those voting in an election by eliminating from the unit groups of individuals who do not or are unlikely to support the organization and to include within the unit individuals who are more favorably disposed to it. (19)

This analysis helps to explain in part the positions of various labor organizations in preelection hearings, of which the SUNY hearings were a good example. In these proceedings, the American Federation of Teachers, representing five campuses, argued for separate units for each campus in the system and for a council of local union representatives to negotiate on statewide issues (43, 50). The American Association of University Professors, which at that time did not include nonfaculty professionals (21), sought to limit the unit only to those holding academic rank, thereby excluding nonteaching professionals, such as guidance and placement personnel (43, 50). The AFT and AAUP arguments were rejected in favor of a statewide unit that included nonacademic professional employees (50). The Senate Professional Association won the election and affiliated with the National Education Association.[1]

The SUNY hearings also focused on an important issue for state university systems: whether a state university system is a unified or a fragmented entity. In its brief before the Public Employment Relations Board, SUNY noted:

> The issues in this proceeding involve nothing less than the question of whether the State University of New York is to continue to proceed in its daily activities as a unified university rather than a loose confederation of competing educational enterprises and therefore not a university at all. . . .[Collective negotiations] will affect *the day to day* activity of the State University and ultimately its mission. (50)

Two other personnel issues have been under discussion in preelection hearings: the appropriate unit for part-time and professional school faculty. Generally, part-time faculty are included

[1] "NEA-Supported Unit Wins Bargaining Vote at SUNY," *The Chronicle of Higher Education*, February 1, 1971.

in the full-time faculty unit, and the NLRB has recently established criteria for including part-time faculty in the bargaining unit (14). The City University of New York's separation of part- and full-time faculty is a notable exception to current practice and the division affected the outcome of the elections for bargaining agent (43). Regarding themselves as professionals distinct from college faculty, Fordham University law school professors raised the issue of a separate bargaining unit for themselves. The NLRB's reasons for granting them a separate unit might be applied to other professional schools:

> Law school faculty constitutes an identifiable group of employees whose separate community of interests is not irrevocably submerged in the broader community of interest which they share with other faculty members. [They] have specialized training, work in a separate building under their own supervisor. . .and, acting as a group, have a voice, separate from that of the faculty of the remainder of the University, in determining their working conditions. (20)

Once the bargaining unit is decided, elections for a bargaining agent or no bargaining agent are held. A majority vote determines the outcome. (Faculty may vote for no agent; see 19, 20). A vote for unionization presents administrators, faculty, and the chosen union with representation problems. From the administration's viewpoint its negotiators must have the authority to speak effectively for management. Deciding on the appropriate representatives can cause major problems (30, McHugh 55). William McHugh cites the Association of New Jersey State College Faculties, Inc.'s attempt to force the Board of Higher Education, rather than the Governor's representatives, to negotiate with it. The Court found that the Governor's office should handle negotiations, since the Governor was responsible for the state colleges' budget (McHugh 55). Another problem would arise if the promises for salary increases or other changes involving more money were not funded by the state legislature. There has been little experience to date with fulfillment of contract promises and more discussion is needed on this problem.

For the union, selection as the bargaining agent does not resolve all representation problems. Under the "exclusivity" doctrine common to most state laws and incorporated into federal labor policy, the bargaining agent is the representative for all employees in the unit on every matter covered by the contract for the

duration of the contract (25, Finkin and Sands 55); however, an employer or employee usually has limited freedom to work with other organizations (McHugh 55). In higher education, this concept has resulted in "minority representation" at 4-year colleges having collective bargaining for professionals (22). The chosen organization negotiates a contract for all members of the unit, although just a minority of those members have formally joined the union. Only the Legislative Conference of the City University of New York has captured 60 percent of its potential membership; the other unions claim as members only 30 to 45 percent of the professionals they represent (22).[1]

Whatever the reasons for nonmembership, the union faces financial difficulties because of the cost of representing all members of the unit, whether or not they pay dues. This situation may force the union to seek a remedy through compulsory fees from all professionals it represents (22). The AAUP is opposed to this tactic (21). For those institutions coming under NLRB jurisdiction this problem may be resolved through an agency or union shop. A union shop requires membership in the union as a condition of employment; an agency shop requires employees represented by the union to pay the fees covering the cost of representation in negotiations (Moskow 55). Employees do not become members of the organization and therefore are not formally associated with its policies. State laws vary on whether they will permit an agency or union shop, or other alternatives. There is no indication that faculty unions will call for a union shop, but they may attempt to institute an agency shop. This attempt may cause a faculty to reject the union in situations where only a small margin of union support exists (22).

The bargaining agent also has the problem of representing impartially all groups within his unit, paying equal attention to the great variety of needs within the unit. There has been little discussion of this responsibility. It may be a troublesome issue for institutional harmony if one sector of a unit claims inadequate or unfair representation. Different interests on campus will also find their influence diminished because the bargaining agent, through exclusivity, gains legal rights and influence with the administration (McHugh 55).

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[1]This discussion is based on the situations at five institutions: the City University of New York, Southeastern Massachusetts, Rutgers, Central Michigan, and the State University of New York.

There is no set procedure for contract negotiations in higher education. The bargaining agent and the administrators deal with unique circumstances created by the union's policies, the institution's administrative structure, and the extent of individual faculty bargaining (Moskow 55). Both parties must also consider a wide range of academic policy issues that will shape the quality of the student's education. This concern over the "product" is not found on the agenda in ordinary industrial negotiations, where it is solely a management interest (Moskow 55).

Despite the variations produced by these circumstances, Donald H. Wollett (55) finds that there are issues common to contracts at 2- and 4-year institutions: procedures for faculty representation; educational policies; working conditions and the administration of personnel policies; aggregate economic issues, including total institutional resources, and their allocation to major budgetary categories and faculty salaries; and public issues and their institutions, such as federal-institutional relations.

An area of major controversy in determining negotiable issues is the extent to which academic policy will be decided by collective negotiations or internal governance procedures. Negotiators are expected to bargain on "wages, hours, and other terms and conditions of employment" (25). Several writers (16, 18, 32, McHugh 55) have recognized that these areas overlap with matters of educational policy. During the SUNY proceedings, one educator observed:

> Any time you allocate economic resources for salaries or buildings or for any other purpose, you have influenced the mission of the institution, you have impinged upon the instruction and research process. (McHugh 55)

At some institutions, the focus of negotiations has been on faculty rights and working conditions. This focus reflects the fact that faculty organize for reasons other than higher salaries. Provisions covering faculty participation in governance, tenure, academic freedom, and procedures for evaluation of teachers have been incorporated into faculty contracts (18, 32, Moskow 55). When these provisions are included in the contract, there is some fear that the traditional faculty rights of academic freedom and tenure, for example, will be abandoned in the bargaining process (22, 28, 34, 51, Moskow 55). But other writers contend that these rights are better protected by incorporation into a binding legal document (34, 39).

Contracts that provide for faculty participation in decision-making overlap with the function of faculty senates or other faculty bodies on campus. Several writers have suggested that the faculty senate will atrophy in a collective bargaining situation when a union becomes an exclusive bargaining agent with the administration (16, McHugh and Wollett 55). This new bilateral relationship will make it easier and more practical for faculty and administrators to deal with overlapping academic and economic issues.

In contrast to this view, other commentators, particularly spokesmen for the American Association of University Professors, believe that the faculty senate can be a viable instrument, distinct from the union agent on campuses that have collective bargaining (5, 18, 46). For example, the St. John's University contract specifically provides that faculty bodies within the university shall continue to function provided that they do not attempt to alter contract provisions. Since the agreement refers to faculty academic policymaking, the faculty has a function to perform.[1] Matthew Finkin (18) explains the difficulties of predicting whether or not these internal policy bodies can be effective over time and suggests that the outcome will depend upon the views and goals of those in the bargaining unit.

Administration of a Contract

Although the collective bargaining literature is concerned with legal problems and the negotiations process, the administration of a contract is also an integral part of collective bargaining (McHugh 55). CUNY has reported about the special set of problems presented by a union contract. These difficulties grow out of the complexity of the university administrative structure and the grievance and arbitration procedures. There has been little discussion in the literature about this aspect of negotiations, but it is at the heart of contract administration. Although the procedures followed and the issues covered differ with each contract (Finkin 55), the City University of New York agreement provides an

[1] *Agreement between the Administration of St. John's University, New York, and the St. John's Chapter of the American Association University Professors–Faculty Association at St. John's University, July 1970.*

interesting example of the potential problems in this area (1, Mintz 55). This contract calls for binding arbitration of grievances, except in areas concerning "appointment, reappointment, tenure, or promotion which are concerned with matters of academic judgment." Binding arbitration was sought by the union, so the administration attempted to protect its interests by excluding academic matters from arbitration (Mintz 55). However, the union may avoid this exemption if the complaint is based on other contract provisions (Finkin 55).

Inevitably, the prospect of unionization raises the fear that disagreements over negotiations or grievance disputes during the life of the contract will result in a faculty strike. In recent years, it has also been recognized that faculty may strike without the encouragement or support of any outside agency (7). Of the national faculty organizations, only the AAUP distinguishes between strikes over educational policy, which it will support, and strikes over economic or political issues, which it opposes (17, 33). Both the National Education Association and the American Federation of Teachers will support faculty strikes on both economic and academic issues (7).

It remains to be seen how realistic it is to fear strikes. Legally, the National Labor Relations Act grants the right to strike to all employees under its jurisdiction (25). Although state laws regulating public employee collective bargaining specifically prohibit strikes (Livingston 55), Hawaii and Pennsylvania recently granted public employees the right to strike and other states may also move in this direction (Livingston 55). There is a debate over the probability of a faculty strike: a college teacher's professional responsibilities may demand that he not strike (33) or the faculty may ignore antistrike legislation, as other employees have done (7).

Collective Bargaining Gains

Faculty can evaluate collective bargaining's success by the extent to which they have achieved the ends they sought. These gains are reflected in the provisions of their contracts that give legal imperatives to such issues as tenure and academic freedom, workload, and participation in governance (32). Most debate over faculty gains centers on salary increases. While faculties have won

higher salaries at unionized institutions, some educators suggest that not all of these increases are attributable to collective bargaining, but were warranted in any case (32, 41). They also note that the criteria for salary gains may have changed under collective bargaining, and CUNY's vice-chancellor suggests that his faculty may not have benefited from this change (41). CUNY faculty also won salary increases through the mandated increase in rank distribution—as yet an unfilled provision—and "parity" for community college teachers and professional staff (22). Joseph Garbarino (22) finds that unionization best serves low-ranking faculty and nonteaching professionals, while "the core faculty 'haves' have shored up some of their benefits from possible attack, but otherwise have gained the least from bargaining."

One significant benefit of collective bargaining may be the fact of unionization itself as a power to balance the state legislature (53). An administrator finds this a favorable consequence:

> The effect of collective bargaining will enhance the traditional pitch of the university to the state government in that the university had unique needs differing from those of other teachers. The State Legislature (New Jersey) has tried to lock [sic] the universities to the State Colleges....The university is against this ad hoc year to year appeal process, and an organized faculty will strengthen their argument. (32)

Collective Bargaining's Role in Academic Life

As a new movement in higher education, collective bargaining has aroused great concern over its impact on academic life. It has been feared as a disruptive influence and praised as an established method of achieving professional goals. Both sides can prove their claims from the experiences of those institutions that have collective bargaining: contract negotiation and administration can be costly for institutional harmony, but the process wins gains for faculty in working conditions and governance.

Recent experience also shows that collective bargaining has more than one manifestation. The reasons for organizing, the union representative, and the administration responses all contribute to the impact unionization will have on any campus. Faculty and administration now have the opportunity to shape the collective bargaining process in a manner appropriate to the needs of the higher education community.

Annotated Bibliography

The collective bargaining issue will continue to receive much attention in the literature about faculty. One such book, *Troubled Professors,* will be published in midwinter 1973. There are also three bibliographies that should be noted: John W. Gillis, "Academic Collective Bargaining," *Liberal Education,* December 1970 and "The Continuing Development of Academic Collective Bargaining," *Liberal Education,* December 1971; and Terrence N. Tice, "Bibliography." In *Faculty Power: Collective Bargaining on Campus.* Ann Arbor: The Institute of Continuing Legal Education, 1971.

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1. Bain, Trevor. "Precarious Professors: New Patterns of Representation. A Comment," and Joseph W. Garbarino, "Reply to Professor Bain," *Industrial Relations* 10 (May 1971).

The writer, a member of the Governing Board of the Legislative Conference (LC) of the City University of New York,

describes faculty-administration relationships under the collective bargaining agreement negotiated in 1969. In view of his experience, he questions Joseph Garbarino's assertion that faculty-administration relationships might be improved under collective bargaining (see 23). Professor Bain found that several factors influenced this increasingly antagonistic relationship: an administration inexperienced in collective negotiations; political pressures on the Board of Higher Education; aggressive student representation; and conflict between the LC and the United Federation of College Teachers, the bargaining agent for part-time teachers. He discusses conflicts that have arisen over the union's role in academic affairs, grievance procedures, and internal union conflict between faculty and staff personnel.

In his reply, Joseph Garbarino asserts that he does not believe collective bargaining eliminates conflict, but rather it makes legitimate conditions of employment negotiated in the agreement.

2. Barbash, Jack. "Academicians as Bargainers with the University," *Issues in Industrial Society*, vol. 1, 1970 (Speech delivered in 1968, at the Midwest Division, Academy of Management).

The professor is distinguished from employees in an industrial relationship by his need for autonomy. His interest in this aspect of employment and in his working conditions has increased as his economic needs have been satisfied. The author believes this interest is particularly strong in public junior colleges and "'emerging' four-year colleges and universities" where autonomy is threatened or seems to be threatened. These threats come from forces outside the institution through involvement in coordination and long-range planning and increasing dependence on federal support. The author foresees the need for college faculty to seek representation with national organizations to deal with these external pressures. He believes that "the virtue of responsible power" is that it will make the professor and his employer recognize the employer-employee aspects of their relationship.

3. Belcher, A. Lee. "The NLRB Ruling: How It Affects Campus Administration," *College and University Business* 49 (August 1970).

The author discusses the National Labor Relations Board's (NLRB) role in collective bargaining proceedings and points out

how its recently asserted authority over private colleges and universities will affect both employees and administration. The unions favor the new ruling because it enhances opportunities to organize and win exclusive representation rights. NLRB jurisdiction also aids university administration by providing clear guidelines for collective bargaining procedures and union and management action. NLRB regulations also define unfair labor practices by unions as well as management. The author believes that the NLRB decision will affect developing state laws.

4. Boyd, William. "Collective Bargaining in Academe: Causes and Consequences," *Liberal Education* 57 (October 1971).

The author is president of a university that has collective bargaining and is experienced in academic negotiations. He discusses the causes for the recent interest in unionization and points to its potential positive and negative impact on the academic community. As a result of unionization, administrators will have to calculate the direct and indirect costs of negotiations in money and time. They will also have to recognize the possible loss of institutional autonomy. Another concern is the possibility of bargaining over academic policies. To avoid this "spillover" into educational policy, he suggests institutions promote effective faculty participation in decisionmaking through such groups as academic senates. Administrators can also help to ease the situation by not insisting on following an industrial collective bargaining model.

5. Brown, Ralph S., Jr. "Collective Bargaining in Higher Education," 67 *Michigan Law Review* 1067 (1969).

The author, a past president of the American Association of University Professors, outlines his views on major issues in collective bargaining, arguing that an internal framework of governance in a "well-ordered" institution is successful without resorting to collective bargaining. This view accords with his belief that faculty have professional responsibilities to their students, their subject area, and their institution and should not be considered merely as professional employees. Discussing the law regulating collective bargaining by public employees, the author takes issue with the application of trade union negotiation models to higher education. Specifically, he questions the concept of a single representative for an entire faculty and contends that the faculty senate should play

a role in collective negotiations. He also examines the problem of defining the appropriate unit for negotiations and suggests that administrators and faculty negotiators who shared similar views on the faculty role could reserve academic issues for determination through internal procedures rather than through a negotiated settlement.

6. Brown, Ralph S. and Israel Kugler. "Collective Bargaining for the Faculty," *Liberal Education* 56 (March 1970).

In his discussion of the American Association of University Professors' position on faculty collective bargaining Ralph Brown emphasizes the Association's preference for meaningful faculty participation in governance. In "well-ordered institutions" collective bargaining is not necessary. He suggests, however, that collective negotiations may improve the quality of an institution and he recognizes their potential impact on faculty, administration, and trustees. Israel Kugler, president of the United Federation of College Teachers (New York sees the faculty and administration in an adversary relationship. He believes that if faculty recognize they are employed professionals rather than self-employed professionals, they will better understand the university's power structure. He also argues that group protection resulting from collective bargaining guarantees individual freedom.

7. Brown, Ronald C. "Professors and Unions: The Faculty Senate: An Effective Alternative to Collective Bargaining in Higher Education?" *William and Mary Law Review* 252, 1970. Reprinted in *Faculty Power: Collective Bargaining on Campus.* Ann Arbor: Institute of Continuing Legal Education, 1971.

This is a survey of the options available to faculty seeking self-government and control over their academic careers. Representation systems, including unionization, are discussed. The author questions whether unionization is the appropriate choice for these faculty because academic issues may not be a proper subject for collective negotiations. In an extensive discussion, the author brings together the current thinking on the problems and possibilities raised by collective bargaining: the unit question; the choice over organizational representation; the methods for settling disputes; and the differences between state and federal laws regulating public employee and teacher collective bargaining. He points out that the federal law contains "restrictive . . . and reciprocal

unfair labor practice provisions" that may be missing in the state law. It may therefore be in the college administration's interest to come before the NLRB. He also predicts that "federal private industrial relations concepts will be used in the public employee sector including the college campus setting."

8. Bucklew, Neil S. "Collective Bargaining in Higher Education: Its Fiscal Implications," *Liberal Education* 57 (May 1971).

Although the author speaks about collective bargaining considerations for all university personnel, his observations may also apply to faculty negotiations. Beyond the direct costs for a negotiating team, an administration must consider the expenses for other personnel who must devote time to planning fiscal reports of current and future income and needs. A negotiating team must also have available the fiscal implications of proposals and counterproposals that are made during the negotiations, and the need for information analysis must be considered. The author notes that some institutions engaged in faculty collective bargaining have developed new negotiation structures rather than use those already available for unionized personnel. This duplication may occur because of a belief that "new professional/faculty negotiations require an understanding of issues significantly different from those normally considered in staff bargaining."

9. Cartter, Allan M. "The After Effects of Putting the Blind Eye to the Telescope." Paper presented at the American Association for Higher Education, Chicago, March 1970. ED 039 855. MF-$0.65, HC-$3.29.

The author discusses the current oversupply of new Ph.D.s seeking teaching positions at colleges and universities. He suggests ways in which this new market situation will affect the future development of higher education: salary scales; mobility; changes in tenure and retirement policy; and a decline in the rate of growth of graduate school enrollments. He predicts that junior faculty who find themselves confined to one institution will take a greater interest in their school's development and may turn to faculty unions as a method of asserting their power.

10. C. W. Post Center of Long Island University and United Federation of College Teachers, Local 1460, American Federation of Teachers, AFL-CIO. 189 NLRB No. 109, April 20, 1971.

In this decision, the National Labor Relations Board (NLRB) issued its first ruling on university teaching staffs. It found that "full-time university faculty members qualify in every respect as professional employees" under the National Labor Relations Act and may therefore bargain collectively. It also ruled that since regular part-time faculty have the same preparation and function as full-time teachers, they should be included in the bargaining unit. The Board found that deans and department chairmen made effective, administrative recommendations concerning faculty staffing, and therefore should be excluded from the unit.

The NLRB issued the same decision in the case of Brooklyn Center of Long Island University (189 NLRB No. 110, April 23, 1971).

11. "Chenango State University. A Case Study." The Institute for College and University Administrators. Washington, D.C.: American Council on Education (n.d.).

This study of a rapidly expanding university illustrates the institutional problems and public pressures that may lead to collective bargaining. Hypothetical Chenango State is a former state teachers college that became a major state university with satellite campuses during the 1960's. Its problems could be those of any private institution coming under the National Labor Relations Act. Factors contributing to unionization include: a new state law allowing public employees to bargain collectively; and the spread of collective bargaining to school and community college teachers. The movement toward unionization was also complicated by the conflicting claims of organizations demanding recognition as the exclusive bargaining agent; different attitudes in the academic community toward bargaining; and legal issues.

12. Cornell University et al., 183 NLRB No. 41. 74 LRRM 1269 (1970).

In this decision, the National Labor Relations Board (NLRB), asserted its jurisdiction over employers of private nonprofit colleges and universities whose operations have a substantial effect on interstate commerce. It did not establish a dollar-volume criteria. This finding reverses the NLRB's stand in the 1951 Columbia University case in which it refused to intervene because of that institution's nonprofit nature. Both Cornell and Syracuse University, which was considered at the same time, demonstrated

their substantial impact on interstate commerce in purchases, student population, and federal relations. The NLRB was also swayed by changes in the federal legislation, increased unionization, and lack of state regulations covering private institutions.

In the December 3, 1970 *Federal Register*, the Board announced it would assert jurisdiction over private nonprofit colleges and universities that have a gross national revenue of $1 million for operating expenses.

13. "The Council Position on Collective Bargaining," *AAUP Bulletin* 57 (December 1971).

The Council of the American Association of University Professors (AAUP) advocates that the AAUP *"pursue collective bargaining, as a major additional way of realizing the Association's goals in higher education"* and selectively allocate its resources beyond present levels for this process. The Council argues that it has long worked for "the principles that govern relationships of academic life." As an active participant in faculty negotiations it can influence the development of a collective bargaining model appropriate for higher education. The statement outlines criteria the AAUP would use to decide which local chapters seeking certification would receive the support of the national office. The Association will ask its membership to discuss this statement before the annual meeting in May 1972, where it will be submitted for ratification.

14. University of Detroit and the University of Detroit Chapter–American Association of University Professors. 193 NLRB No. 95, Oct. 6, 1971.

The NLRB ruled that part-time teaching faculty and departmental chairmen should be included in the professional bargaining unit. The rulings also established for the first time standards for determining part-time faculty eligible for the unit: those faculty "teaching 3 or more hours in all university schools except Schools of Law and Dentistry are regular part-time employees eligible to vote in the [unit] election." The Law School part-time faculty are subject to a 4-to-1, full-time-to-part-time, hours-taught ratio, so that faculty teaching two hours or more a week per semester are eligible to vote. In a similar 4-to-1 ratio, part-time dentistry faculty are eligible to vote based on their number of working days

per school year. The Board also ruled that departmental chairmen should be included in the unit, rejecting the local chapter of American Association of University Professors' contention that they were supervisors and should be excluded.

15. *Employment Relations in Higher Education*. Edited by Stanley Elam and Michael H. Moskow. Bloomington, Indiana: Phi Delta Kappa, Inc., 1969.

This collection of papers and discussions from a symposium on collective negotiations held at Temple University in 1968 provides an introduction to major issues in the unionization of higher education faculty. In "Faculty Organizations in Higher Education," Harry A. Marmion discusses the collective bargaining positions of the American Federation of Teachers, the American Association of University Professors (AAUP) and the National Education Association. Myron Lieberman concentrates on the problems of the faculty senate in his discussion of representational systems. He finds them too dependent on their employer institution, and too free from accountability. He predicts that the "representational vacuum" in higher education will be filled by collective bargaining. In his examination of the faculty's working conditions, John W. Gustad also suggests that the possibility of unionization indicates that traditional methods of affecting working conditions are no longer satisfactory for an important number of faculty. Walter E. Oberer argues that unionization may result where faculty, which he characterizes as "mediocre," may be unhappy with traditional methods of decisionmaking. He finds that the combination of internal forms of decisionmaking and external organizations, such as the AAUP, provides the best arrangement for faculty representation. Maurice R. Duperre discusses "Faculty Organizations as an Aid to Employment Relations in Junior Colleges."

16. *Faculty Participation in Academic Governance*. Report of the AAHE-NEA Task Force on Faculty Representation and Academic Negotiations, Campus Governance Program. Washington, D.C.: American Association for Higher Education, National Education Association, 1967. ED 018 218. MF-$0.65, HC-$3.29.

This report is based on a survey of 34 public and private junior colleges and 4-year colleges and universities. It suggests that

faculty unionism is growing along with faculty demand for greater participation in academic governance. Several factors have contributed to this development: "rising expectations" of professional control, particularly at the junior colleges; transitional conflicts in developing institutions between the authoritarian style of the old administrators and newer faculty accustomed to a collegial approach; and problems created by rapid enrollment growth, particularly at the public institutions. New statewide governing boards have also taken away local faculty autonomy. Economic issues did not play a primary role in increased faculty militance at the institutions studied. Although the task force favors the academic senate as the mechanism for faculty participation, it recommends that a collective bargaining unit be given full recognition when a majority of the faculty support it. It foresees conflict over spheres of interest between this agency and the academic senate. The history of collective bargaining in industry shows that unions become involved in issues originally thought to be management concerns. In higher education, the admissions policy may be shaped by the academic senate, but the union may negotiate in this area because the policy influences faculty work loads.

17. "Faculty Participation in Strikes," *AAUP Policy Documents and Reports*. Washington, D.C.: American Association of University Professors, 1971. ED 052 767. MF-$0.65, HC-$3.29.

This 1968 report and statement reverse an earlier Association policy that condemned the strike mechanism under any circumstances. The new policy was formulated after strikes occurred at St. John's and Catholic universities and in recognition of a growing interest in collective bargaining at public colleges and universities. In the Statement, the Association reiterates its belief that faculty should share in administrative decisions. Where this situation exists, the strike is not the appropriate method of resolving conflicts. The Statement delineates circumstances in which a strike may be necessary: where violations of academic freedom or principles of academic government cannot be resolved through discussion.

18. Finkin, Matthew W. "Collective Bargaining and University Government," *AAUP Bulletin* 57 (June 1971).

The author, associate counsel for the American Association of University Professors, discusses elements of collective bargaining that will influence the faculty's role in campus governance. He believes that the degree of faculty participation existing prior to unionization may be increased or limited by a faculty contract. The bargaining agent's view of its role and the nature of the academic community will determine its position on provisions for faculty government. Other areas which will affect faculty government include the composition of the bargaining unit, the scope of negotiations, exclusive representation, and the collective bargaining process. The author also examines the differences in contracts negotiated at 4-year colleges and universities that have contracts. An earlier version of this article appeared in the *Wisconsin Law Review* (54).

19. Finkin, Matthew W. "Faculty Negotiations," *Proceedings, Central Association of College and University Business Officers, April 1970.*

The author discusses the reasons for the growth of faculty collective bargaining and outlines some of the organizational problems involved. In addition to the more favorable climate for public employee collective bargaining that now exists in several states, he suggests that faculties are also organizing because of a need for professional security and/or an improved economic situation. A major issue in organization is the decision concerning who should be included in the bargaining unit. State statues declare that a "community of interest" should be the determining factor, but the author argues that units "tend to reflect more political than legal considerations." An employee organization wants a faculty or professional group most likely to select it as their representative and must also consider that a unit with a diversity of interests is more difficult to represent fairly. The employer wants the unit that most simplifies contract negotiation and administration. Both employer and employee organization may share an interest in avoiding extensive litigation to determine what groups should be included in the unit, and some trading off at the initial stages may therefore occur. The author also discusses the problems arising from a conflict between internal governance procedures and the rights accorded the faculty union in the negotiated contract.

20. *Fordham University and American Association of University Professors, et al.*, Briefs of the Employer, Petitioners, Amicus Curiae, and National Labor Relations Board Decision (193 NLRB No. 23, September 14, 1971).

The National Labor Relations Board (NLRB) reaffirmed its jurisdiction over professional employees at private, nonprofit colleges and universities and provided new rulings on departmental chairmen, professional school faculties, and Jesuit professors. Fordham University had contended that the faculty was not entitled to bargain collectively because they were supervisors: they effectively determined policy in many areas; they directed the work of teaching assistants; and they processed grievances. The Board, however, agreed with the petitioner, American Association of University Professors, that the faculty members are employees of the university rather than an arm of the administration. The Board found that the faculty at Fordham engages in managerial work only when it acts as a whole, not as individuals. Supervision of teaching assistants on an individual basis was found to be part of the faculty member's professional responsibility in the teacher-student relationship. The Board also disagreed with the University's argument that departmental chairmen are *de facto* supervisors and therefore must be excluded from the bargaining unit. Departmental chairmen at Fordham were deemed agents of the faculty, and their primary community of interest was viewed as being with the faculty. The Board also accepted the arguments of an amicus brief filed by the Association of American Law Schools, which contended that the law school faculty should be in a separate bargaining unit because it was significantly different from other faculties in its training and experience, its governance system, and its regulation by outside agencies.

Fordham University Faculty rejected collective bargaining by a vote of 236 to 222 (*Higher Education and National Affairs*, December 10, 1971, page 5).

21. "Forging Better Tools. Report of Committee N, 1970-71." Ralph S. Brown, Chairman. *AAUP Bulletin* 57 (Summer 1971).

The Chairman of Committee N on Representation of Economic and Professional Interests devoted this report to issues confronting the American Association of University Professors (AAUP) on collective bargaining. The AAUP must resolve the problem created in collective bargaining proceedings when the

negotiating unit, determined by statutory agencies, includes professionals not considered faculty members by the Association. In New York State, for example, this situation means that 25 percent of those voting in the professional unit were not AAUP members. Other conflicts between traditional collective bargaining practice and AAUP policy include: AAUP representation of non-paying faculty versus the agency shop; and the AAUP survey of faculty salaries as opposed to its adversary role in bargaining. The Chairman believes the Association must develop new approaches to collective bargaining that are compatible with the AAUP policies.

By action of the AAUP Council in October 1971, a change in constitutional requirements for membership is proposed, subject to approval at the Annual Meeting. The following sentence would be added to Article II, paragraph (1)(a) of the constitution: "Any professional appointee included in a collective representation unit with the faculty of an approved institution may also be admitted to Active membership in the Association."

22. Garbarino, Joseph W. "Creeping Unionism and the Faculty Labor Market." Draft Copy of paper prepared for a Carnegie Commission on Higher Education Report. Forthcoming, Spring 1972.

In this analysis of the impact of academic collective bargaining in higher education, the author finds that negotiations change the relationship between administration and academic staff and also serve to "[accelerate] the integration of the several submarkets that make up the overall academic labor market." The "submarkets" of low-ranking faculty and nonfaculty professionals have benefited more than the "core" teaching faculty. But a significant fraction of the core faculty will agree to unionization to support those in the academic community who win real gains from negotiations. The author foresees greater "homogenization" resulting from collective bargaining and fears this uniformity will be another factor obstructing the development of first rank universities.

The author also reviews in some detail the recent collective bargaining history of four senior institutions that have negotiated contracts: City University of New York, Southeastern Massachusetts University, Rutgers, Central Michigan University, and the State University of New York.

23. Garbarino, Joseph W. "Precarious Professors: New Patterns of Representation," *Industrial Relations* 10 (February 1971).

The political, social, and economic factors that are reshaping once favorable attitudes toward higher education are also causing faculty to seek new methods of representation. The author discusses the possible alternatives: academic senates; local faculty associations, such as the Legislative Conference of the City University of New York; and external professional and union organizations. Although the senates and faculty associations may adequately represent faculty where no formal bargaining procedures exist, they face staffing and financial problems once these procedures are instituted. He compares the strengths and weaknesses of the major external organizations: the American Association of University Professors, the American Federation of Teachers, the National Education Association, and the Civil Service Employee Associations. Instead of using the traditional adversary relationship in collective bargaining, the author suggests that academic communities engage in "productivity bargaining," a recent development in industry. This method seeks to modernize personnel policy to accord with the progress in operations developments. Such an agreement should include an exchange of major concessions and "machinery for joint action to improve efficiency in the future."

24. Garbarino, Joseph W. "Professional Negotiations in Education," *Industrial Relations* 7 (February 1968).

The first section of this article deals with various models of professional relationships. The "ideal academic model" combines the professional autonomy inherent in the self-employed professional model with the security of the employed-professional relationship. In this model, the belief in the "community of interests" provides the faculty with considerable influence in policy decisions and allows the successful use of faculty in some managerial positions. The author suggests that external organizations become involved in an academic community that does not have a successful academic senate to assert faculty control.

The second section deals with the implications of California's Winton Act that stresses the teacher's professional role. The Act, in an unique provision, also establishes a negotiating council composed of "proportional representation of all organizations competing to represent certificated employees. . . ." This provision

eliminates exclusive representation for any organization, and seems to suggest instead that the council will become the exclusive bargaining agent. The author predicts that organizations in California will attempt to "look and sound like professional societies, but, if necessary, will act more like unions." California law does not provide for collective bargaining in the senior colleges and the university.

25. Gorman, Robert A. (Professor of Law, University of Pennsylvania) to Bertram H. Davis (General Secretary, American Association of University Professors). Memorandum on "Statutory Responses to Collective Bargaining." January 4, 1968. ED 052 757. MF-$0.65, HC-$3.29.

The author examines the legal principles embodied in the National Labor Relations Act (NLRA) and relates these concepts to faculty collective bargaining in higher education. The six concepts identified are: the duty to bargain collectively; exclusive representation; resolution of disputes over the establishment of collective bargaining and the selection of representatives; protection against employer coercion; the right to engage in concerted activities; and the establishment of machinery to resolve disputes. He also describes the ways in which state legislation regulating public employment deviates from the federal model. These differences affect faculty collective bargaining at public institutions. State models prohibit public employees from striking and substitute third party mediation and nonbinding fact-finding procedures. State statutes may also limit the "terms and conditions of employment" negotiated, and some provide for more liberal grievance procedures than the federal model.

26. *Government Employment Relations Report 371*, pp. B5-B17. Washington: Bureau of National Affairs, 1971.

This issue reports the discussions at a conference on "A New Decade in Labor Relations in the Public Sector: A Special Look at Negotiations in the Schools and Colleges," sponsored by the Federal Bar Association, and the Foundation of the Federal Bar Association, in cooperation with the Bureau of National Affairs. Discussing the scope of bargaining, Michael Moskow, executive director of the Construction Industry Collective Bargaining Commission, cited three considerations: teacher organization policies; the institution's own authority structure; and the amount of

bargaining conducted on different levels. The legality of the strike and its role in collective negotiations were discussed in one workshop, and one panelist noted "'a weakening of judicial opposition to strikes'." One attorney believed that major issues on public employee collective bargaining will be clarified during the 1970's. These problems include: unit determination; scope of collective bargaining; employer identification; administrative agencies; political role of employees; and methods of resolving disputes. The writing and administration of faculty contracts is another area where more experience is needed.

27. Haehn, James O., "Collective Bargaining in Higher Education: An Empirical Analysis in California State Colleges." Paper presented at the California Educational Research Association, San Diego, April 30, 1971. ED 052 679. MF-$0.65, HC-$3.29.

This paper discusses the results of surveys of public school and college teachers who favor collective bargaining procedures. A profile of the college teacher might show that he comes from "an upper manual and lower white collar background," he is more likely to be dissatisfied with his work environment, and will support militant tactics to change his conditions of employment. A past tendency for supporters to be drawn from liberal arts disciplines is broadening to include other fields, except engineering. The studies also note a greater research orientation among pro-bargaining faculty. This orientation might explain their dissatisfaction with a work environment that does not strongly support research. The author concludes that collective bargaining reflects a "rise in militant professionalism" that results from educational and occupational concerns.

28. Hanley, Dexter L. "Issues and Models for Collective Bargaining in Higher Education," *Liberal Education* 57 (March 1971).

The author, president of the University of Scranton, discusses faculty collective bargaining under the National Labor Relations Act and the reasons for his opposition to faculty unionization. He observes that a collective bargaining agent serves as the exclusive negotiator for all faculty, including those opposed to unionization; however, this disrupts governance and administrative processes. He also fears the loss of academic tenure and individual advantages through collective negotiations. As an alternative to unionization,

he proposes the institution of a professional negotiating team like that developed at the University of Scranton. This team represents the faculty and provides the advantages found in formal collective bargaining, but it does not have the legal standing of a majority bargaining representative. The author favors the collegial atmosphere in which the negotiations were conducted, and believes they will encourage increased participation in governance for the faculty team and the faculty as a whole.

29. Hepler, John C. "Timetable for a Take-over," *Journal of Higher Education* 42 (February 1971).

The author describes how the Michigan Association of Higher Education (MAHE), affiliated with the Michigan Education Association, organized the faculty at Central Michigan University (CMU). The MAHE won the right to act as a bargaining agent by 18 votes in a September 1969 election and won ratification of its agreement by 287 votes in a March 1970 election. MAHE was only a small organization when it collected the necessary petitions for the September election. The author suggests it capitalized on dissatisfaction with salaries, concern that the new president would be unable to get sufficient state funding, resentment over the president's concentration on students, and general discontent. That the faculty is young and has little loyalty to the institution also favored their success. The author faults the administration for not providing an inexperienced faculty with information on possible alternatives to and the problems of collective bargaining.

30. Hixson, Richard A. "Problems in Negotiating for Professors." Colleges and Universities Department, American Federation of Teachers. November 1970.

The director of the American Federation of Teachers' colleges and universities department discusses the steps that lead to collective bargaining, which he defines as "the acquisition and/or the transfer of real power." He outlines a pattern which is followed in faculty unionization: establishment of the union; surface and survival; growth and development program; and collective bargaining status. When organizing faculty, the union promotes a more sophisticated concept of unions than most faculty have. His experience also indicates that the most troublesome aspect of organizing is locating the source of power within the administration. He discusses the case of one institution having difficulty determining who has the authority to negotiate for management.

31. Howe, Ray A. "Roles of Faculty," in *Power and Authority* edited by Harold L. Hodgkinson and L. Richard Meeth. San Francisco: Jossey-Bass, 1971.

The author attributes the increase in faculty collective bargaining to the "revolution of rising expectations" promoted by the growth of the higher education industry. When faculty lack power, they are learning to take it through collective action. At that point, they are not likely to accept an administration's offer to share authority. He also suggests that faculty militancy does not endanger the life of an institution, but the administration's response to faculty demands may. The administration must make an effort to work with the faculty toward an effective solution.

32. "An Impartial Review of Collective Bargaining by University Faculties." Prepared by the Michigan State University Faculty Affairs Committee. March 9, 1971. HE 002 640 (RIE, March 72). MF-$0.65, HC-$3.29.

This review collects information and surveys opinions on faculty collective bargaining from faculty, administrators, and legislators. The material is presented in a question and answer format. In the first section, faculty and administrators describe how collective bargaining works on their campuses. These institutions include: Central Michigan, City University of New York, Rutgers, Southeastern Massachusetts, and St. Johns, all of which have contracts. Personnel at Oakland University and the State University of New York, then negotiating contracts, were also interviewed. Sections II and III are reports on faculty and administrative opinion at Central Michigan University. The current status of collective bargaining at the Big Ten schools is examined in section IV, and legislators' opinions are discussed in section V. In the next section, the procedure for selection or rejection of a bargaining agent is outlined, and the last section presents information on faculty salaries and collective bargaining.

33. Kadish, Sanford H. "The Strike and the Professoriate." In *Dimensions of Academic Freedom.* Urbana, Illinois: University of Illinois Press, 1969.

In this 1968 lecture, the author examines the faculty member as a professional person, the impact of a strike on that role, and the administration's reaction to a strike. Elements that constitute a professional role include: a disinterested commitment to public

service; autonomous performance of the job; and a degree of shared participation in decisionmaking between faculty and administration based on common objectives, and the pursuit of excellence. An economic strike undermines this concept of professionalism because it creates an adversary relationship between faculty and administration where a collegial relationship had existed. The governance process, which relies on faculty participation, would therefore be harmed by the threat or the fact of a strike. The strike and the collective bargaining process also places self-interest above the service concept by destroying the commonality of interest that characterizes a university community. At the same time, the strike requires a mass commitment that subjugates the individuality of the faculty member, and the bargaining agreement promotes collective action over individual merit advancement. The commitment to reason and quiet persuasion in the university community is also at odds with the coercive method of the strike.

An abridged version of this speech appears in the *AAUP Bulletin* 59, Summer 1968.

34. Keck, Donald J. "Faculty Governance and the 'New Managerial Class'," *NFA Reports* 5 (November-December 1971).

The author, a staff member of the Higher Education Division of the National Education Association, argues that collective bargaining is a more effective system for faculty participation in academic governance than the faculty senate system. The increased centralization of power at the upper levels of college management and state agencies has weakened the authority of faculty senates and academic departments. He sees collective bargaining as the appropriate method of balancing this centralized power with faculty power. Answering fears that collective negotiations will result in abridgements of academic freedom, rigid work rules, and conflicts on campus, he asserts that these situations have arisen where the faculty is not organized. A unionized faculty is in a better position to respond to these attacks.

35. Kerr, J. David. "Faculty Organizing and Bargaining in Higher Education," *The College Counsel* 6 (1971).

The author, an attorney for Central Michigan University, discusses the trend toward collective bargaining in higher education and some of the questions with which university counsel must

be concerned. He also points out that federal labor laws, which now regulate employees at some private colleges and universities, allow strikes, while state laws governing public employees prohibit strikes. (Hawaii and Pennsylvania are exceptions.) He also advises the college administration to use labor counsel at the negotiating table who are experienced in seeing the potential consequences of an agreement.

36. Kugler, Israel. "Unionism: A New Instrument for Faculty Governance," *ISR Journal* 1 (Summer 1969).

The author argues that faculty unionization is an appropriate method for professionals to use in righting the balance of power between faculty and the administrative-trustee hierarchy. Faculty must recognize that as employed professionals they do not have the autonomy that characterizes the self-employed professional. To regain that independence, they must unionize and thereby obtain the power necessary for autonomy. He rejects as incorrect some other ideas about unionization: strikes are not necessarily a consequence of unionization, but the final alternative when other methods have failed; unionization does not require a union or closed shop in an academic community in which membership is determined by merit.

In *Higher Education and Professional Unionism* (Washington: American Federation of Teachers, 1971), the author presents similar arguments and briefly discusses the reason for the growth of faculty unionism.

37. *Lawrence Institute of Technology and Lawrence Institute of Technology Chapter, American Association of University Professors. Trial Examiners Decision.* October 31, 1971.

This is the first case in which the National Labor Relations Act's unfair labor practice provisions were applied to a nonprofit educational institution and three of its teachers. These teachers, who had been at Lawrence Institute of Technology (LIT) for several years, did not have their contracts renewed for the 1971-72 academic year. They charged that this lapse occurred because of their activity in promoting collective bargaining for the faculty. Officials responsible for their nonrenewal claimed that the teachers were not rehired because of unsatisfactory teaching performances. The trial examiner found for the teachers and ruled that LIT: cease and desist from discouraging membership in the

American Association of University Professors, LIT chapter, or discriminating against employees with regard to hiring, tenure, or other terms and conditions of employment; notify and offer the three professors their former jobs, or substantially equivalent positions and return any lost earnings; and post a notice of this decision to the faculty.

38. Lieberman, Myron, "Professors, Unite!" *Harper's* 243 (October 1971).

The author identifies four major reasons for the growth of faculty collective bargaining: new state legislation allowing public employee collective bargaining; the recent National Labor Relations Board decision to assume jurisdiction over private colleges having a significant impact on interstate commerce; the security provided by collective bargaining agreements; and the decrease in public and private financial support of higher education. The author foresees several significant changes at institutions having collective bargaining agreements. He believes these changes will benefit higher education. Although faculty would continue its role of policy formation, it would no longer help to administer that policy. He also suggests that administrators would assume a greater management role while the boards of trustees would lose some of their power. Other consequences of faculty unionization may include student unionization and professorial political activity.

39. Livingston, John C. "Academic Senate Under Fire," In *Agony and Promise;* edited by G. Kerry Smith. San Francisco: Jossey-Bass, 1969.

The author believes that higher education's developing role as an institution for social change has created new tensions on campus that will probably result in an adversary relationship between faculty and administrators/trustees. A professor of government at Sacramento State College, the author bases his discussion on California's experience. In an adversary relationship, he believes the academic senate will defend militant faculty groups and may find itself forced into the role of a collective bargaining agent. Although this role conflicts with the faculty's expertise at analyzing problems rather than resolving them, the senate would be the most flexible organization in collective negotiations. He fears, however, that successful bargaining will intensify hostile public and political views of higher education.

40. Livingston, John C. "Collective Bargaining and Professionalism," *Educational Record* 48, (Winter 1967).

Answering charges that collective bargaining is "unprofessional," the author suggests that faculty may feel forced to organize to promote professionalism in higher education. He suggests that traditional practices undermine the professional concept on college faculties. Within the college, the hierarchal faculty ranking system, "peer" evaluation, and merit salary increases combine to create an unprofessional atmosphere. The apparent need to "sell" higher education to the public also contributes to the corruption of the professional concept in higher education. Collective bargaining may serve to protect the educational function of the university from social pressure. A union may also allow the faculty to present a viewpoint on their role to political agencies and the public. Presently, only administrators and trustees speak for higher education.

41. Malamud, Phyllis, "Faculty: Labor or Management?" *Change*, September 1971.

This brief article discusses the rise of collective bargaining and cites the opinions of faculty and management at Fordham University, the City University of New York (CUNY), and Rutgers University. A desire for higher salaries is listed as a reason for unionization at Fordham, while the vice-chancellor for administration at CUNY claims that the unions were not responsible for high faculty salaries at their colleges. Rutgers University faculty selected the American Association of University Professors as their representative to separate themselves from community and state teachers colleges that had chosen the National Education Association.

42. McHugh, William F., "Collective Bargaining and the College Student," *Journal of Higher Education* 42 (1971).

The author, special counsel for employment relations at the State University of New York, discusses the reasons for student involvement in collective bargaining negotiations and the ways in which students may participate. He points out that faculty collective bargaining extends beyond economic issues to questions of academic and institutional policy in which students have demonstrated their interest. Students may participate in negotiations as employees—part-time workers or teaching assistants. They may

also be involved as interested third parties rather than principals. In this instance, they may work on negotiation resource subcommittees or standing committees concerned with negotiations.

43. McHugh, William F. "Collective Negotiations in Public Higher Education," *College and University Business* 47 (December 1969).

The author discusses faculty unionization in New York State since the passage of the Taylor Law in 1967 that provided for collective bargaining for public employees. He notes community college teacher negotiators expect nearly all those institutions to be unionized within the next few years. The Public Employment Relations Board (PERB) established under the new law has determined bargaining units for both the City University of New York and the State University of New York. These decisions involved the resolution of issues concerning part-time and full-time professional staff at the City University and local versus university-wide bargaining at the state level. Other questions that must be answered concern managerial rights, the relationship of professional educational organizations to nonprofessional employee organizations, and the possibility of negotiating educational policy.

For detailed discussion of the positions in the State University of New York case, see McHugh, "Collective Bargaining in Higher Education–The New York Experience," *The College Counsel* 4, 1969.

44. McHugh, William F. "Recent Developments in Collective Bargaining in Higher Education," *The College Counsel* 5 (1970).

In this article, the author outlines and comments upon faculty collective bargaining developments in 1969. He cites a survey of college faculty in which 54.1% disagreed with the proposition that faculty should not bargain collectively and predicts a trend toward collective bargaining by faculty and other professionals. Several faculty agreements negotiated thus far indicate that such contracts will deal with academic and policy issues.

45. "Negotiations in Higher Education," *Negotiations Research Digest,* September 1971.

This article, in a National Education Association journal, discusses the state legislation applicable to faculty at public community colleges and 4-year colleges and universities. It reports that higher education faculty in 19 states have been accorded or may

be assumed to have negotiation rights under one or more bargaining statutes. In three states, local or municipal employees alone have negotiation rights, while 28 states have legislation covering professional school employees. The report also predicts that state boards of labor relations will follow Connecticut's example and assert jurisdiction over small private colleges not under the National Labor Relations Board's jurisdiction. In another section, the article reports on salary negotiation policy and practice in 1,141 4-year colleges and universities in 1969-70.

46. "Policy on Representation of Economic Interests," [1969] *AAUP Policy Documents and Reports.* Washington, D.C.: American Association of University Professors, 1971.

The American Association of University Professors' (AAUP) position is based on the belief that faculty should have powers and responsibilities in their academic community that might be reserved to management in private industry. The AAUP prefaces its policy statement with the recommendation that faculty promote their economic interests through self-governing mechanisms within their institution, such as faculty elected councils or senates. They also suggest that the faculty in public institutions will have to work through a professional organization, like the AAUP, to deal with governing and coordination boards, legislatures, and the federal government. The AAUP policy does not support state legislation that imposes exclusive representation by a collective bargaining agent for faculty members. It favors, instead, joint representation from organizations having substantial membership, and also supports the academic senate as a bargaining agent. The AAUP will become involved in collective bargaining negotiations on an interim or permanent basis if internal governing procedures are not functioning effectively. When an AAUP affiliate acts as the negotiating agent, it will adhere to the principles and policies of the Association and support grievance procedures for any group or individual.

See new AAUP position on collective bargaining, Item 13.

47. Polishook, Sheila Stern. "Collective Bargaining and the City University of New York," *Journal of Higher Education* 41 (May 1970).

The author examines the causes underlying faculty unionization at the City University of New York. In the December 1968 elections, the separate units established for part-time nontenured

instructors and for tenured faculty selected the United Federation of College Teachers and the Legislative Conference, respectively. For the nontenured unit, only 12.8 percent of those voting were opposed to collective bargaining; 84.9 percent of the tenured faculty supported collective bargaining. The author suggests that the faculty did not have any real power under the nonunionized structure and argues that unionization is an acceptable method for working within the university system. Opposing the collective bargaining proposal, administrators argued that such an arrangement would show hostility towards students and the community and damage the shared interest tradition of the academic community.

48. Scully, Malcolm G. and William A. Sievert, "Collective Bargaining Gains Converts Among Teachers; 3 National Organizations Vie to Represent Faculties," *The Chronicle of Higher Education*, May 10, 1971.

This article outlines the positions and status of the American Association of University Professors (AAUP), the American Federation of Teachers (AFT), and The National Education Association (NEA) in unionization of faculty at 2-year and 4-year institutions. It describes the organizing efforts of each group and finds that the NEA thus far is the most successful in winning campus membership.

49. Shoemaker, Elwood A. "Act 195 and Collective Negotiations in the Commonwealth of Pennsylvania." December 1971. HE 002 793 (RIE, May 72). MF–$0.65, HC–$3.29.

The author discusses the impact of the 1970 Public Employee Relations Act on higher education in Pennsylvania. The law applies to public and nonprofit private institutions; provides for exclusive representation; excludes "matters of inherent managerial policy" from negotiations; and legalizes strikes for most employees if a series of mediation efforts have failed. In 1970, 4,000 faculty members at state-owned institutions chose an affiliate of the National Education Association as their collective bargaining agent, and interest in unionization has been evident at the three-related universities. The author points out that because strikes in the public sector rely on favorable public relations rather than threat of a profit loss, they are not readily used. No legal strikes have taken place. Unanswered questions remain about the cost of negotiations and the role of administration and trustees under the new law.

50. State of New York Public Employee Relations Board. Decision and Order of the Director of Representation in the Matter of State of New York (State University of New York) and State University Federation of Teachers. . . and Faculty Senate and Civil Service Employees' Association, Inc. and Council of Affiliated Chapters of the American Association of University Professors, in the State University of New York. August 12, 1969.

In these proceedings the Director of Representation resolved the issue of whether the Faculty Senate could be considered an employee organization for purposes of collective negotiations, and he determined the unit structure for professional employees in the State University of New York system. Finding for the Senate and against the various locals of the State University Federation of Teachers, the Director of Representation noted that the history and purpose of the Senate showed experience in negotiating terms and conditions of employment and independence for the University administration. A single statewide unit for professional employees was approved because it complied with statutory criteria: all professional employees in the University share a community of interest; the University structure has a single Board of Trustees for centralized decisionmaking; and a single unit best meets public needs. The State Federation proposal for local negotiating units and a coalition of negotiating representatives for University-wide issues was rejected.

51. Stevens, Carl M. "The Professors and Collective Action: Which Kind?" Paper presented at the Twenty-fifth Anniversary of the University of Minnesota Industrial Relations Center, May 18, 1971. HE 002 604 (RIE, March 72). MF—$0.65, HC—$3.29.

The author cites two major reasons for faculty involvement in collective bargaining and discusses the possible consequences connected with each. Although some faculty members organize for economic gains, the author believes there is not enough evidence at present to know if collective bargaining can provide these gains. He also suggests that the strike—the tactic which gives unionized faculty their power—will not be readily employed. Faculty also organize to achieve a greater degree of "shared responsibility" in institutions which refuse them this power. To reach this goal, faculty can choose between two types of

contracts: the "conventional collective agreement," or the "procedural agreement." In the former, the contract serves as the faculty's only form of participation in decisionmaking at the institution. It includes clauses on salaries, grievance procedures, and professional evaluation. In the second agreement, which the author prefers, procedures for shared authority are established, and the contract serves as a "constitution." It may, for example, incorporate the policy statements issued by the American Association of University Professors. He discusses reasons why the peculiar nature of the academic community would be more compatible with a procedural than a collective agreement.

52. Sumberg, Alfred. Statement presented at the National Conference on Higher Education, March 2, 1970, in *Faculty Power: Collective Bargaining on Campus*, Ann Arbor: Institute of Continuing Legal Education, 1971.

Speaking for The Representation of Economic and Professional Interests Program of the American Association of University Professors (AAUP), the author presents the AAUP's position on faculty collective bargaining. He argues that collective bargaining for faculty must be built on a foundation of academic freedom, shared authority, and economic advancement. The AAUP encourages faculty "to implement the principle of shared authority through faculty senates or to engage in collective bargaining" if that method will resolve immediate problems. A question-and-answer statement covering specific problems in collective bargaining follows this introductory remark.

53. Tyler, Gus. "The Faculty Joins the Proletariat," *Change* 3 (Winter 1971-72).

The author, assistant president of the International Ladies Garment Workers Union, discusses faculty unions in the context of a "new class" of white collar, service employees that has developed since World War II. Faculty who join unions are attempting to regain the status and power that have historically been theirs. He cites events which have diminished faculty power: student unrest; financial difficulties; oversupply of college teachers. He warns that the diverse factions in the academic community—full- and part-time faculty, researchers, and administrators—may split the community if enough financial resources are not available. Unions may be instrumental in obtaining the necessary funding.

54. Western Michigan University. Committee to Study Faculty Collective Bargaining. Faculty Senate. "Interim Report." Kalamazoo, April 9, 1970. HE 002 664 (RIE, April 72). MF–$0.65, HC–$3.29.

The Senate committee studying professional collective bargaining found that experiences in industrial labor relations and public school negotiations are not directly applicable to higher education. The committee outlines 13 areas of concern to faculty and discusses the impact that negotiations might have on these interests. Contracts may not only increase salaries, but change budgetary systems; substantially improve fringe benefits; increase faculty participation in governance; and establish grievance procedures. The committee studied documents and conducted meetings and interviews with educators experienced in collective bargaining.

55. *Wisconsin Law Review*, volume 1971, number 1. Madison, Wisconsin: University of Wisconsin Law School, 1971.

This issue is largely devoted to faculty collective bargaining: its impact on the academic community and the legal issues involved. Six of the eleven articles are revised versions of papers presented at the City University of New York's National Conference on Collective Negotiations in Higher Education, held in May 1970. These articles include: "The Status and Trends of Collective Negotiations for Faculty in Higher Education," Wollett; "The Scope of Collective Bargaining in Higher Education," Moskow; "Collective Bargaining with Professionals in Higher Education," McHugh; "State and Federal Regulation of Collective Negotiations in Higher Education," Livingston and Christensen; "The CUNY Experience," Mintz; and "Collective Negotiations in Higher Education–Canada," Proulx. Matthew W. Finkin and C. Dallas Sands, both affiliated with the American Association of University Professors, have also contributed to this symposium. Three articles deal with the organization of teaching assistants at the University of Wisconsin.